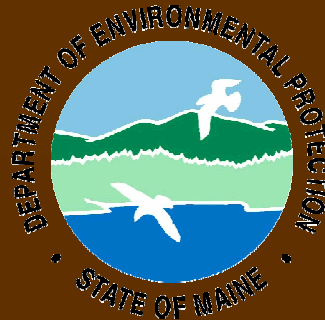


Regulatory Framework for Organized Areas



Commissioner David Littell



**Maine Department of
Environmental Protection**

Overview

- Site Location of Development Law (“Site Law”)
- Natural Resources Protection Act (NRPA)
- Stormwater Law
- Erosion and Sedimentation (E&S) Control Law
- Municipal ordinances





SITE LAW

What Types of Development under Site Law Regulation

- Developments of state or regional significance that may substantially affect the environment.
- By statute, this includes development that:
 - Occupies a land or water area in excess of 20 acres
 - Is a “structure” (3 acres)
 - Other




Site Law Statutory Standards

- No adverse effect on the natural environment
 - “...developer has made adequate provision for fitting the development harmoniously into the existing environment...and will not adversely effect existing uses, scenic character, air quality, water quality or other natural resources....”

Site Law Statutory Standards, cont.

- Financial capacity
- Stormwater management and erosion and sedimentation control; flooding
- Groundwater
- Infrastructure (looks at both provision of utilities by the development, and affect on local existing or proposed utilities)

A photograph of a winter mountain scene. In the foreground, a snow-covered slope with ski tracks leads up. To the left, a large evergreen tree is heavily laden with snow. Behind it, a wooden signpost is partially visible. In the middle ground, a line of smaller snow-covered evergreen trees stands on the slope. The background features rolling, snow-covered mountain ridges under a blue sky with wispy white clouds.

Site Law Rules

Site Law Rule Standards

“No Unreasonable Adverse Effect”

Chapter 375

- Air quality
- Climate (alteration of local climate)
- Alteration of natural draining ways
- Runoff/infiltration relationships
- Surface water quality; groundwater quality and quantity

Chapter 375 standards cont.

- Buffer strips
- Preservation of historic sites
- Preservation of unusual natural areas
 - “any land or water area, usually only a few acres in size, which is undeveloped and which contains natural features of unusual geological, botanical, zoological, ecological, hydrological, other scientific, educational, scenic, or recreational significance.”

Chapter 375 standards cont.

- Access to direct sunlight (e.g. not block access to sunlight for structures using solar energy)
- No unreasonable impact on scenic character
- Noise control
- Wildlife and Fisheries

Chapter 375(10) Noise Control

- Sound from routine operation of the development
- Sound from construction
- Measurement procedures
- Standards applicable depend upon factors such as
 - presence of protected location (i.e. home, school, hospital, park, wildlife preserve, Appalachian Trail, etc.)
 - time of day
 - zoning or comp plan (e.g. commercial/industrial vs. residential)
 - location (e.g. property boundary)
 - type of noise

Chapter 375(15) Wildlife and Fisheries

- Pre-application monitoring study for migratory birds and bats to include observations made during seasonal and diurnal migration periods. Monitoring shall include information on species numbers, altitudes and flight paths and include radar and ceilometer techniques, as necessary, for night migrants.
- The monitoring report will be jointly reviewed by the DEP and DIFW.

Chapter 375(15) Wildlife and Fisheries cont.

- Post-construction monitoring (2 years) to assess actual impacts from the project on migratory birds and bats.
- If the DEP and DIFW determine, based on post-construction monitoring, that an unreasonable impact has been created, the applicant will be required to work with the DEP to develop an acceptable mitigation plan for those impacts.

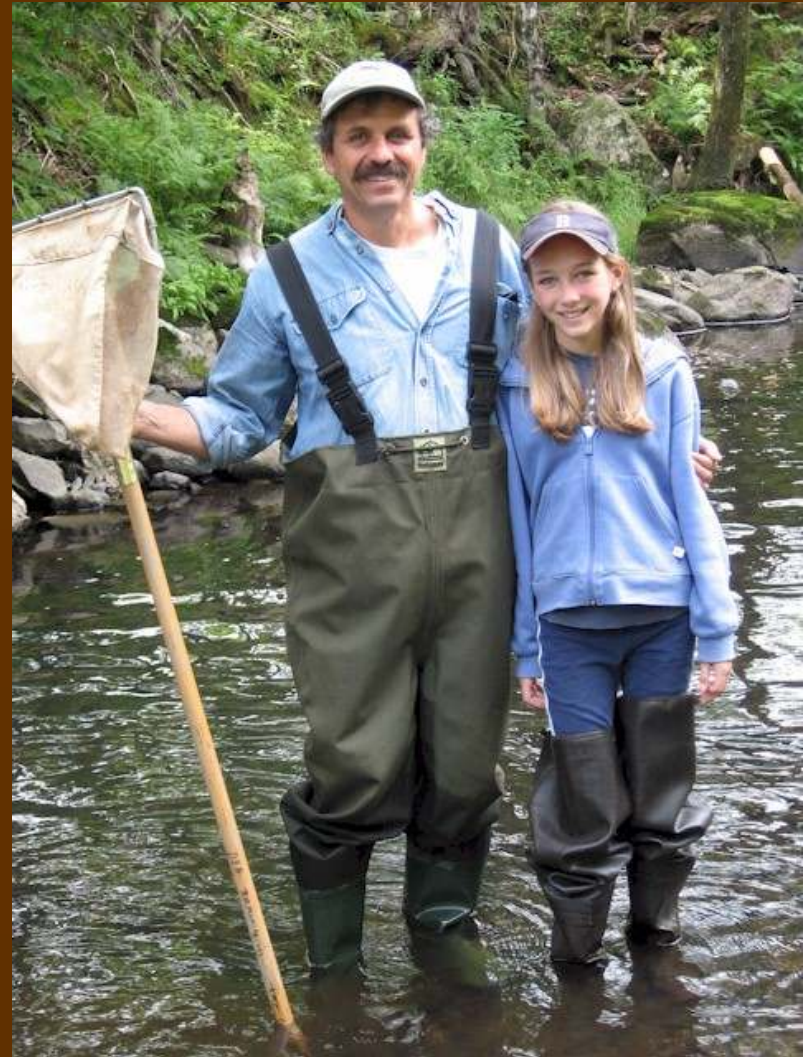
The strength of the Site Law is that it provides an agency with authority and flexibility to address the range of potential site-specific impacts from significant developments. Such impacts typically vary from one development to another, and from one site to another, even for the same type of development. This holistic approach has held up well for over 35 years.

Natural Resources Protection Act (NRPA)

- ❑ Lakes (great ponds)
- ❑ Freshwater and coastal wetlands
- ❑ Rivers, streams and brooks
- ❑ Significant wildlife habitat
- ❑ Coastal sand dune systems
- ❑ Fragile mountain areas

A Multiple Resource Law

- NRPA was created in the late 1980s by consolidating and refining several resource-type specific laws (Great Ponds Act, Coastal Wetlands Alteration, etc.), and has worked well for nearly two decades.



NRPA:

This single resource law makes it easier to protect natural resources that interconnect on the landscape



Fragile Mountain Areas

- Areas above 2,700 feet in elevation from mean sea level.



Types of Activities that Need a Permit

- *Bulldozing, removing or displacing soils, sand, vegetation and other materials*
- Placing fill in a resource
- Draining or dewatering a resource
- *Construction, repair, or alteration of any permanent structure in a resource*

NRPA: Standards

- Existing uses (scenic, aesthetic, recreational or navigation). Rules: Ch. 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses
- Harm to habitats; fisheries.
 - The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland habitat, threatened or endangered plant habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life

NRPA: Standards

- Soil erosion
- Interference with natural water flow (surface or subsurface)
- Lower water quality
- Flooding
- More



Note on Site Law and NRPA

- Both have “scenic” standards; both have “wildlife” standards. The standards are different but they are not inconsistent – we need both.
- Generally, the Site Law provides broader authority to protect against unreasonable impacts, which is appropriate with big projects.
- The DEP considers both laws when reviewing projects, if applicable.

A photograph of a winter forest. The ground is covered in a thick layer of snow. Several tall, thin, bare trees stand in the foreground, their dark trunks contrasting with the white snow. In the background, a body of water is visible, also covered in snow. The sky is overcast and grey. The text "Public Participation" is overlaid in a bright yellow-green color in the lower right quadrant of the image.

Public Participation

Public Participation – Ch. 2 Rules

- Public information meeting requirement prior to filing (new Site Law project). Must provide DEP fact sheet on public participation to participants.
- Public notice requirements (mailing, notice contents, when have to repeat it)
- Public comment allowed during course of processing the application
- Material available for public inspection

Public Participation – Ch. 2 rules cont.

- When issuing a decision, DEP must include findings of fact with sufficient explanation to make interested persons aware of the basis of the determination. Decisions are subject to requests for reconsideration and appeal processes.
- Internal process: project managers provide copies of orders.

A photograph of a construction site. In the center, a yellow Caterpillar bulldozer is positioned on a gravel path, facing the camera. To its right, a yellow excavator is visible, working on a pile of dirt. In the background, there are large mounds of brown earth. The ground is a mix of dirt, gravel, and some sparse vegetation. The sky is overcast and grey. The text "Stormwater Law" is overlaid in white at the bottom left.

Stormwater Law

Stormwater Management Law

- Stormwater (and erosion control) standards for projects disturbing one acre or more
- A project that gets a Site Law permit doesn't need a separate Stormwater permit
- DEP put the stormwater standards for both laws in the same chapter to make sure they would work together. Site Law sized projects, which are bigger, sometimes have to meet higher standards.

Erosion and Sedimentation Control Law (the “little law”)

- Requires the installation and maintenance of erosion control measures to prevent soil discharge to protected natural resources or beyond the project site.
- Standards are consistent with, but more basic than, requirements typically associated with a permit.

LAST POINTS



What These Environmental Review Laws Do

- Provide for good, site-specific environmental review of the site identified by the developer, in order to try to avoid unreasonable adverse impacts.
- Provide the State with the flexibility and authority necessary to address a wide range of site-specific potential impacts.
- Provide for significant public participation
- Require a permit to be issued to the developer if standards are met.

What These Environmental Review Laws Don't Do

- They don't weigh concrete unreasonable adverse local impacts against potential benefits to a wider community.
- They don't build public support for an industry.
- They do not offer incentives or subsidies for any particular industry.
- They can't determine where windpower projects ought to go. They are not planning laws.

